

EXHIBIT 13

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 03-MDL-1570 (GBD) (SN)

5 -----x.

6 IN RE: TERRORIST ATTACKS ON

7 SEPTEMBER 11, 2001

8 -----x

9 April 7, 2021

10 2:25 p.m.

11 Videotaped Deposition via Zoom
12 of MATTHEW A. LEVITT, pursuant to Notice,
13 before Jineen Pavesi, a Registered
14 Professional Reporter, Registered Merit
15 Reporter, Certified Realtime Reporter and
16 Notary Public of the State of New York.

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1 LEVITT

2 Q. I would like to understand your
3 career progression.

4 You were a student, you
5 graduated from Yeshiva and then you did
6 your graduate work at Fletcher School, is
7 that correct?

8 A. Yes, I worked for a year in
9 between in a fund-raising and consulting
10 firm in Manhattan just to pay my way while
11 my wife was in graduate school and then
12 went to the Fletcher School of Law and
13 Diplomacy for my graduate studies.

14 Q. What firm was that that you
15 worked for in New York?

16 A. I would have to look it up, it
17 was a one-year thing between two parts of
18 my life.

19 Q. Right.

20 And then after you did your
21 masters and completed it and your orals in
22 May of 2005, what did you do then?

23 A. So I continued on as a Ph.D.
24 student, I think now one can apply from
25 the outset to pursue a Ph.D. in advance of

1 LEVITT

2 the masters, but at the time you had to do
3 the two-year masters, maintain a certain
4 GPA, get accepted, nominated, by the
5 faculty to be able to continue on for the
6 Ph.D.

7 So I did that and the following
8 year was spent in one more semester of
9 course work and then a semester of intense
10 study for the Ph.D. exams, which at least
11 at the time for me included three
12 three-hour written exams in each of my
13 three areas of concentration and one-hour
14 oral exam with representatives from each
15 of those concentrations.

16 Q. And then you finished that
17 academic exercise in or around 1997, is
18 that correct?

19 A. That's right.

20 If you look at the bottom of
21 page 1 of the CV, you'll see Program on
22 Negotiation at Harvard Law School, so it
23 was at that point that I was awarded a
24 graduate research fellowship at Harvard
25 Law School.

1 LEVITT

2 There is a consortium called
3 the Program on Negotiation that involves
4 various schools at Harvard, MIT and the
5 Fletcher School, I had already published a
6 couple of papers with them and was
7 fortunate to get -- to be awarded the
8 graduate research fellowship, so that gave
9 me an office in Harvard Law and a research
10 budget and I spent the 1997-1998 academic
11 year there, including doing my field
12 research for the Ph.D., writing the first
13 couple of chapters -- well, researching,
14 preparing for the fieldwork took months,
15 doing the fieldwork, you know, writing up
16 all the notes from the fieldwork and then
17 actually writing up the first two
18 chapters, the kind of foundational
19 methodology chapter and then the first of
20 my three case studies was the second
21 chapter.

22 Q. And you were a Soref fellow
23 during the summer of 1998 at The
24 Washington Institute for Near East Policy?

25 A. Well, what happened was I was

1 LEVITT

2 Washington Institute.

3 Q. When were you offered the job?

4 A. So it must have been -- it was
5 sometime that November, I went to meet
6 with them, with someone, to ask advice
7 about a different job, someone in Congress
8 was looking for a senior staffer, and they
9 said, look, if you want I'm happy to put
10 in a good word for you, but why wouldn't
11 you come here, the Institute covered
12 terrorism before but never had a dedicated
13 program, why don't you come and found the
14 program and be a senior fellow.

15 It was offered like that on the
16 spot, I said I need to speak to my better
17 half, but accepted pretty quickly, and
18 that was that.

19 Q. Director of terrorism studies,
20 correct?

21 A. Correct.

22 Q. Subsequent to that you became a
23 part-time consultant to the 9/11
24 Commission, is that right?

25 A. That's correct.

1 LEVITT

2 Q. When did you start in that
3 position?

4 A. Don't remember the date, but
5 the person who was leading the commission
6 on the professional staff reached out to
7 me, Zelikow, and I don't remember if it
8 was lunch or coffee, but asked me to meet
9 with him and I did and asked me to join
10 the 9/11 Commission full-time.

11 I thought about it and decided
12 I didn't want to do that full-time, I
13 wanted to be able to stay at The
14 Washington Institute, and so they said how
15 about doing this as a part-time capacity.

16 As it happened, it was located
17 not far from my office in Washington and
18 so I said yes.

19 I didn't end up staying very
20 long, it was a little bit frustrating to
21 be in a part-time capacity and things were
22 so fast-moving and I was part-time that
23 renewing my clearances logically was not
24 the priority and so after a few weeks,
25 probably two, maybe three months, of me

1 LEVITT

2 going in, I forget, a few hours a week, I
3 said, you know what, I think it would be
4 best if you get only full-time people and
5 they agreed.

6 Q. Did you not have a clearance
7 while you were working for the 9/11
8 Commission, had the clearance not come
9 through?

10 A. That's true, that's correct.

11 I only ended up staying there
12 for a small number of weeks.

13 There is also the issue that
14 they wanted to interview me and they did
15 ultimately interview me and if I had
16 stayed that would have been difficult, so
17 this kind of addressed both issues.

18 Q. I see you don't list that on
19 the CV; is that because of the brevity of
20 time that you were there?

21 A. Yes, it was a very part-time
22 short thing.

23 I feel like, you know, you put
24 that on your CV and people aren't going to
25 pay attention to the time and it's going

1 LEVITT

2 to look like you're padding the CV.

3 So I don't shy from telling
4 people about it when it's appropriate, but
5 it only was what it was.

6 Q. Did you have any further
7 contact with the 9/11 Commission after you
8 left as a part-time consultant?

9 A. I don't recall, it's certainly
10 possible.

11 There were a lot of people who
12 were working there who I knew well.

13 I don't recall if we had any
14 contact, but I did not have contact with
15 them in kind of a professional capacity, I
16 didn't go in for meetings or things like
17 that.

18 Q. In 2005 you then went back into
19 the government; did you go in as deputy
20 assistant secretary for Intelligence and
21 Analysis or were you promoted to that
22 position?

23 A. No, I went into that position,
24 so it was my first time in senior
25 executive service, so I had to apply both

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2 Intelligence, ODNI, meeting I had to go
3 to; ODNI at the time was located at a base
4 at the edge of Washington, so without
5 public transportation it was just
6 tremendously difficult, so to go to all of
7 these meetings and then to be able to do
8 the substantive work I needed to do meant
9 that I was putting in, you know, lawyers
10 hours without the compensation and I
11 wasn't able to do the stuff that I love
12 most.

13 So once a series of things that
14 I wanted to see through were done and I
15 felt that I had put this new office, this
16 congressionally-mandated center of
17 excellence, on its feet and helped
18 identify a successor, I could move on and
19 I did.

20 Q. In your capacity, you had a
21 security clearance, did you not, when you
22 started there?

23 A. Yes.

24 Q. And you had it throughout the
25 time that you were there?

1 LEVITT

2 A. I did and then when I left, I
3 didn't have to, but I chose to terminate
4 it.

5 Q. And have you had a security
6 clearance since?

7 A. I have not had a regular
8 security, an ongoing security clearance
9 since, and in very rare instances, where
10 the intelligence community wanted to
11 consult me on something, they either, if
12 it's a secret collateral clearance
13 information, they just grant that to you
14 for the moment, and then for more
15 sophisticated stuff, they can basically
16 read you in, you sign a bunch of papers,
17 do your consultancy, they read you out,
18 you sign a bunch of papers and you're done
19 and can't talk about it.

20 Q. Did any of those subsequent
21 clearances have anything to do with events
22 that are the subject of this case?

23 A. The good news is I can't
24 remember because the bad news is if I did
25 I wouldn't be able to tell.

1 LEVITT

2 It is the same type of thing,
3 you have to sign all kinds of things to do
4 this, to be, quote/unquote, read out, and
5 that most basic thing is you can't talk
6 about what you did here.

7 Q. Let me ask you this question
8 then.

9 You saw a lot of classified
10 material while you were at Treasury,
11 correct?

12 A. Correct.

13 Q. And you reviewed intelligence
14 product concerning terrorism, correct?

15 A. Correct.

16 Q. And you reviewed intelligence
17 product regarding OFAC designations of
18 SDGTs, correct?

19 A. Correct.

20 Q. And you reviewed intelligence
21 product concerning designations of
22 defendants in this case, correct?

23 A. At least some; certainly not
24 all of the defendants in this case.

25 Q. Did you review intelligence

1 LEVITT

2 WINEP, I've only read the acronym?

3 A. Yeah, we call it The Washington
4 Institute, but I'll respond however you
5 would like to call it.

6 To be clear, I never worked at
7 OFAC, Office of Foreign Assets Control, I
8 was in the Office of Intelligence and
9 Analysis, which along with OFAC is within
10 Treasury's Department of Terrorism and
11 Financial Intelligence.

12 Q. Was OFAC an office within your
13 reporting structure or was it separate?

14 A. It was parallel.

15 Q. So you had no supervisory
16 authority in what you were doing, is that
17 correct?

18 A. So the way -- it's not
19 structured this way anymore, but the way
20 it was structured at the time, the Office
21 of Intelligence and Analysis did a lot of
22 work with OFAC, OFAC would ultimately
23 implement sanctions, but the process of
24 researching, drafting, working on
25 designations was part of what Office of

1 LEVITT

2 Intelligence and Analysis, for which I was
3 the deputy assistant secretary, worked on
4 together with OFAC.

5 Q. Whose decision was it to
6 implement or not implement sanctions
7 recommendation?

8 A. Oh, a whole lot of different
9 people and a whole lot of different
10 offices in and well beyond Treasury.

11 Q. Ultimately who was the
12 decision-maker?

13 A. Ultimately the secretary of the
14 Treasury.

15 Q. Would your office have input
16 into that decision?

17 A. My office and many others in
18 and out of Treasury.

19 Q. And your office wrote up the
20 recommendation package and dossier, is
21 that right?

22 A. The specifics of how it works,
23 I can only get into so much detail, but,
24 yes; analysts would write up the various
25 drafts, it would have to go up through

1 LEVITT

2 various chains, I described the process as
3 best I could in my report.

4 Part of that review went across
5 my desk.

6 Q. You said that you met with Gulf
7 charities.

8 Was that, I apologize for using
9 the term OFAC, was that when you were at
10 Treasury or when you were at The
11 Washington Institute?

12 A. I can't answer the question
13 about Treasury because that was in my
14 capacity as an intelligence official.

15 But it's certainly been as an
16 academic outside of government.

17 Q. You've met with the directors
18 of Gulf charities?

19 A. I believe it was with
20 directors; I don't remember titles and
21 names right now, it certainly was with
22 senior officials.

23 Q. Which ones?

24 A. Again, I'd have to look that
25 up, but I travel significantly -- well,

1 LEVITT

2 A. I was about to say it's a very,
3 very broad question and I certainly don't
4 consider myself an expert in all things
5 legal.

6 I do have a masters in law and
7 diplomacy, I consider myself someone who
8 has an understanding of certain issues in
9 the law, but I do not consider myself a
10 legal expert as such.

11 Q. Do you consider yourself having
12 an expertise in the statutory framework
13 set forth by the U.S. government with
14 respect to terrorist designations?

15 A. Yes, I have experience in that
16 and with other countries' regulatory
17 systems.

18 Q. Do you consider yourself an
19 expert in evaluating audit reports?

20 A. I really don't enjoy doing
21 that, so I suppose the answer is no, but
22 it has been --

23 Q. No one does.

24 A. -- for my sins, something
25 I've had to do from time to time.

1 LEVITT

2 Asia.

3 Q. You don't speak any of the
4 languages of Southeast Asia?

5 A. No.

6 Q. You don't speak Arabic either,
7 do you?

8 A. No, I have very limited
9 understanding and limited vocabulary, but
10 I don't speak Arabic.

11 Q. You do consider yourself an
12 expert, though, on the OFAC designation
13 process, is that correct?

14 A. I lived it, so, yes.

15 Q. You've worked in your capacity,
16 you've worked on evaluating and managing
17 the intelligence that supported
18 designation process, is that correct?

19 A. That's one way to put it,
20 that's fine, I don't know if I would put
21 it that way, but that works.

22 Q. I presume your expert opinion
23 is that you did a good job at it?

24 A. I tried, I got awards; there
25 were no complaints.

1 LEVITT

2 A. I remember it happened, I don't
3 remember doing it, but, yeah, for purposes
4 of your question, yeah.

5 Q. I'm still a little bit unclear
6 on your relationship to the Office of
7 Foreign Assets Control.

8 Was it your responsibility as
9 deputy assistant secretary for the Office
10 of Intelligence and Analysis to prepare
11 this type of memo with respect to
12 designations under Executive Order 13224?

13 A. Intelligence analysts in my
14 office would do the research and prepare
15 the evidentiary, which would go through
16 all the stages I discussed in my report,
17 within the Department of Treasury and
18 within and across the larger general
19 agency.

20 Once it went through the vast
21 majority of those hurdles, the process was
22 that it would go in the form of a memo
23 like this from the Office of Intelligence
24 and Analysis to the Office of Foreign
25 Assets Control.

1 LEVITT

2 Again, OFAC and OIA were both,
3 you could think of it as sister components
4 within the larger TFI, Terrorism and
5 Financial Intelligence branch of the
6 Treasury Department.

7 Q. Once you prepared this memo,
8 your office would have already gone
9 through the interagency process in
10 compiling of information that's contained
11 therein, is that correct?

12 A. Yes, it is possible that there
13 can still be other steps, but generally,
14 yes.

15 At this point it has gone
16 through these various hoops, with the
17 exception, I believe, of the two stages of
18 legal review.

19 The intelligence office would
20 be doing kind of the substantive
21 information based on all the various
22 sources and then it goes to OFAC and OFAC
23 doesn't just, you know, say sure, OFAC
24 then does its piece of this, which is the
25 legal review for sufficiency by OFAC

1 LEVITT

2 Treasury Department lawyers and the
3 simultaneous but very separate legal
4 review by lawyers at the Department of
5 Justice for litigation risk.

6 Q. At the time that you prepared
7 this memorandum, had there been a dialogue
8 between your office and the office of the
9 secretary with respect to whether this
10 designation was approved or would be
11 approved?

12 A. I am not going to get into the
13 internal conversations I had with Treasury
14 leadership.

15 But these are not rogue, you
16 know, operations, this is part of the
17 department.

18 So the department, it goes
19 through all the checks and all the
20 balances, no one's surprised, and so
21 authorities would be aware that this is in
22 process, that it had even been considered,
23 that it was approved at various levels, et
24 cetera and so the appropriate offices
25 would know.

1 LEVITT

2 Q. Approximately how long did the
3 process take from your office being
4 charged with investigating and considering
5 this designation to the preparation of
6 this memo which has been marked as 2003?

7 A. These can be extensive
8 processes; more than that I can't say.

9 Q. When you came to the Treasury
10 Department, was it already in process?

11 A. That's very possible, I don't
12 remember.

13 Q. Did you personally review the
14 evidentiary package before you signed the
15 agreement?

16 A. Of course.

17 Q. Did you review --

18 A. I, like many, many others,
19 there are all these different levels that
20 have to be gone through.

21 Q. Did you review the exhibits?

22 A. Yes.

23 Q. I assume there was a tremendous
24 amount of classified information that went
25 into this given that it's 754 pages and we

1 LEVITT

2 can read about eight of them, is that a
3 fair assumption?

4 A. You can see that the document
5 that you put in front of me was at one
6 point classified top secret and more,
7 which has been redacted.

8 Q. The current redactions continue
9 to remain, because it continues to remain
10 classified, is that right?

11 A. As far as I know.

12 Q. How many classification
13 designations did you work on during your
14 15 months at the Department of Treasury?

15 A. Many.

16 Q. More than ten, fewer than ten?

17 A. More than ten.

18 Q. How many memos like this one,
19 which then went to OFAC for final review,
20 would you have signed off on?

21 A. Each of them.

22 Well, yeah, each of the ones
23 that I was involved in.

24 There is many different types
25 of sanction regimes and many different

1 LEVITT

2 types of designations and I did not -- I
3 was not the from signatories that you see
4 here on all of them.

5 But for the ones that were
6 related to terrorism and a variety of
7 other sanction regimes, that would have
8 been me at the time.

9 Q. Can I then deduce that you
10 signed off on more than ten of these while
11 you were there?

12 A. Yes.

13 Q. Now, you refer in your report
14 to the preparation of an evidentiary
15 package.

16 Is the evidentiary package what
17 appears here as the memorandum which
18 contains it looks like 13 pages or, yes,
19 it is numbered 13 on the bottom, is that
20 what you were referring to as the
21 evidentiary package, and then following
22 from that is an exhibit list and footnotes
23 and exhibits, is that correct?

24 MR. HAEFELE: Object to the
25 form.

1 LEVITT

2 THE WITNESS: Sorry?

3 MR. HAEFELE: I said objection
4 to form, but you can answer it.

5 A. Evidentiary package is the
6 whole kit and caboodle to include this
7 memo of the kind of narrative, if you
8 will; it would include all of the
9 underlying information.

10 Q. I think that you spoke in your
11 report about an evidentiary package
12 supported by an -- an evidence package
13 supported by exhibits, but maybe it is
14 just terminological.

15 I just want to make sure that
16 we're on the same page as to how it's
17 done; maybe when we come back to the
18 substance on this, I can find that
19 reference in your report.

20 There are exhibits and is that
21 a standard feature of this kind of
22 memorandum, that there is a list of
23 exhibits and then exhibits and then a list
24 of notes that cite the exhibits, is that
25 correct?

1 LEVITT

2 A. I believe so --

3 MR. HAEFELE: Object to form.

4 A. You seem to be looking at
5 something and I don't see what that is.

6 Q. I'm looking, I can give you a
7 page number, exhibit list which has a U, I
8 assume U means unclassified?

9 A. Correct, for those documents
10 that are unclassified, it will still have
11 a classification marking letting you know
12 that it is unclassified.

13 Anything else will have
14 markings S or TS and whatever other
15 appropriate markings, there can be quite a
16 few, to denote what the classification is
17 for that particular report, or in this
18 case exhibit.

19 Q. Okay, we'll come back to that
20 document on the substance.

21 Now, we talked a little bit
22 about languages.

23 I presume you have translators
24 available to you for documents in various
25 languages, correct?

1 LEVITT

2 answer that question, please.

3 A. I would do terrible on Jeopardy
4 for that reason.

5 I did include, so I did rely
6 on, some number, but I don't think it was
7 all that many, of declassified
8 intelligence reports, because I thought
9 that would be useful.

10 Q. There were reports that you
11 relied on, you were relying on the
12 unredacted material, not the redacted
13 material, correct?

14 A. Clearly.

15 Q. Obviously the Hammerle memo,
16 you saw the classified material, but now
17 it's redacted, correct?

18 A. That's correct, and the nature
19 of the human brain is such that there is
20 no way I'd remember those details now,
21 anyway.

22 Q. You've forgotten every single
23 bit of it, if you looked at the exhibits
24 you would have no idea what you looked at,
25 is that your testimony, sir?

1 LEVITT

2 A. I think you're twisting my
3 words, so, no.

4 Q. No, I'm asking you a question,
5 I am not twisting anything, I'm asking you
6 a question.

7 A. If I were to look at the
8 report, would I remember other things,
9 maybe, maybe not.

10 If I were to then look at the
11 exhibits, would that trigger something,
12 maybe, maybe not.

13 You know, I don't know how good
14 your memory is, maybe mine is just
15 particularly poor, but I am not going to
16 remember every sentence or term or phrase
17 from a document that I reviewed quite a
18 few years ago.

19 Q. You looked at classified
20 information; you can't say sitting here
21 today whether you recall some of that
22 classified information or you don't?

23 A. I can definitively tell you
24 that I have forgotten a vast majority of
25 classified information I've ever seen,

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2 that's the way the brain works and I
3 wanted it that way, that's why I turned in
4 my clearances, because I knew I'd be going
5 out into the open source world and I would
6 want to be able to go to conferences and
7 do media appearances or, not like what I
8 was thinking about at the time, but it
9 also enables me to do something like this,
10 serve as an expert witness, without having
11 to worry where do I know something from.

21 Q. And also there are things that
22 you remember from a long time ago and you
23 don't remember how you remember them,
24 isn't that a fair thing to say?

25 A. Sure, mostly about, you know,

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2 intelligence product is put on a secure
3 system and you have the clearances to
4 access that system and to access this
5 document, right, you will almost certainly
6 not also have access to the underlying
7 source information, but because that's
8 part of the process, right, if it gets to
9 the point where it's published, you know,
10 classified within the system, not
11 published to the world, you can have a
12 level of confidence that there's been a
13 very careful scrub of the sources and
14 their reliability, et cetera.

15 Q. Obviously the standard of proof
16 that an intelligence agent might apply is
17 not the same standard that a court would
18 apply on admitting evidence, is it?

19 A. No, there are many different
20 standards out there for information within
21 government.

22 There are different standards
23 in criminal cases and in civil cases,
24 standards for evidentiaries, designations,
25 and all of that.

1 LEVITT

2 But you can have a sense of
3 confidence in the reliability in
4 intelligence community information and the
5 reason for that is because the system is
6 so robust.

7 Q. With respect to the finished
8 intelligence products that you were
9 referring to?

10 A. No, I was -- I was explaining
11 in all cases.

12 I'll review again; certainly in
13 the finished intelligence products, but
14 even in more raw intelligence it will be
15 necessary, if I'm the person writing this
16 cable, for me to provide some information,
17 maybe not to you, but to whoever job it
18 is to oversee sources, and there is
19 specialization for that, so that people in
20 a position to supervise this, to make
21 independent assessments in case I get too
22 close to my source, can verify the
23 credibility or can rank the confidence
24 that we have in a particular source of
25 information.

1 LEVITT

2 And so that would even come at
3 some level within the raw intelligence,
4 because otherwise how are you going to
5 have access to that to make those
6 decisions whether or not to include it in
7 the finished product or not.

8 Q. Presumably different levels
9 applied as you go up through the process,
10 is that fair?

11 A. It's not really how it works,
12 but in a nutshell, there are different
13 ways to assess source and there are very,
14 very strict and set methodological systems
15 in place for determining, you know, high
16 confidence, medium confidence, low
17 confidence, et cetera.

18 It is not this kind of simple
19 subjective, well, I trust the guy -- my
20 screen is just jumping everywhere, I don't
21 know about you.

22 Q. Not mine.

23 A. All right.

24 Q. In practical terms, did you
25 ever find that intelligence agencies ever

1 LEVITT

2 altered their standards in view of the
3 urgency of the issue that was presented,
4 for example, terrorism?

5 MR. HAEFELE: Object to the
6 form.

7 THE WITNESS: Answer?

8 MR. HAEFELE: Yes.

9 Q. Yes.

10 THE WITNESS: I apologize, I
11 think that's you, Mr. Haefele, I just hear
12 that you said something, I can't hear what
13 you have said in those circumstances, I
14 don't know if you're too close to your mic
15 or not.

16 A. So I have not had that
17 experience myself, I'm fortunate to say.

18 Though you're trained to look
19 for it and to question and to doubt and to
20 double-check.

21 But there have been instances
22 -- let me rephrase.

23 There has been reporting,
24 because I haven't been personally involved
25 in these reviews or cases, where there is

1 LEVITT

2 pressure to move quickly or something like
3 that and somehow the process is rushed.

4 That has not been my
5 experience.

6 Q. But you have heard that it has
7 happened in the government, correct?

8 A. I have read reports, like
9 everybody else has read reports in the
10 press, that this has happened.

11 I can't speak to what exactly
12 did or didn't happen and the reason it's
13 so surprising when it is reported is
14 because the systems really are so kind of
15 set in stone and therefore it's shocking
16 when you hear reports that the system
17 didn't work, to me they're the exceptions
18 that prove the rule.

19 But I also have no firsthand
20 experience or knowledge of situations like
21 that, I'm very happy to report.

22 Q. Are you familiar with the
23 extensive academic literature on selection
24 bias in intelligence reporting?

25 A. I am familiar.

1 LEVITT

2 Q. Pressure being brought on
3 analysts to produce intelligence that
4 their political superiors are seeking to
5 have?

6 A. Well, that's another matter.

7 Selection bias is not something
8 that is unique to the intelligence
9 community, selection bias is a problem for
10 anybody working in a research field
11 potentially.

12 The second question that you
13 asked of political pressures is the
14 conversation we just had; I never
15 experienced it, period, but I have read
16 press reports of instances like that, but
17 I have no firsthand knowledge, I can't say
18 how it happened, if it really happened
19 that way, what part of the system was
20 bucked, if it was one last review or -- I
21 can't, I don't know.

22 Q. Presumably over time some
23 intelligence turns out to be right and
24 some turns out to be wrong and the
25 community is updating and correcting all

1 LEVITT

2 the time, am I correct?

3 A. I wouldn't put it that way --

4 MR. HAEFELE: Objection to
5 form.

6 A. The vast majority of
7 intelligence turns out to be on the ball.

8 We're dealing with human beings
9 and we're dealing with information,
10 information can change, events can shed
11 new light that you didn't have before, and
12 so you can have circumstances of course
13 where over time you find out that some
14 information continues to prove to be just
15 as right as it was and some information
16 you find there's new stuff out there.

17 In the intelligence community
18 there is a process for correction.

19 Q. You don't, presumably once you
20 give up your clearances, you don't know
21 whether earlier intelligence that you've
22 looked at have been updated and corrected
23 or not, correct?

24 A. Correct, I don't have access to
25 that, full stop.

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2 Q. You also referenced certain
3 foreign intelligence agencies.

4 In your experience, are foreign
5 intelligence sources more reliable, less
6 reliable, or about the same as U.S.
7 intelligence reporting?

8 A. So what specifically are you
9 referring to --

10 MR. HAEFELE: Objection to
11 form.

12 Q. You cite the Dutch Intelligence
13 Service twice.

14 Do you have experience with the
15 Dutch Intelligence Service?

16 A. Yeah, I do, including out of
17 government.

18 And this is an unclassified
19 report, so there is no redacted portion.

20 Many intelligence agencies,
21 including U.S. intelligence agencies, do
22 sometimes produce fully unclassified
23 reports.

24 In the United States we have
25 the Global Trends Report by the director

1 LEVITT

2 Q. I'm right that with respect to
3 the designations in this case, you did not
4 talk to anybody from IIRO at all, correct?

5 A. Who I spoke to when I was in
6 government is not something I can talk to.

7 Q. But it is -- let's talk about
8 generally you do not talk to potential
9 designees, correct?

10 MR. HAEFELE: Objection to
11 form.

12 A. OFAC talks to all kinds of
13 people, including people who have been
14 designated.

15 There is no requirement to talk
16 to people before they're designated and
17 the main reason is that you're dealing
18 with people who are being accused of
19 engaging in illicit conduct and you don't
20 expect when you go up to the bank robber,
21 excuse me, did you rob the bank, for them
22 to say something particularly useful in
23 the circumstance.

24 Q. Well, that comes back to your
25 Al Capone comment.

1 LEVITT

2 Sometimes you can ask the bank
3 robber and they can explain why they
4 didn't do it, right, and you can listen to
5 that.

6 A. Did I make an Al Capone
7 statement?

8 Q. You've done it many times, not
9 today yet, do you recall that, you say you
10 don't go talk to Al Capone and ask him
11 whether he is in organized crime.

12 We don't need to talk about Al
13 Capone, we can talk about a bank robber.

14 A. I'm sorry, you've confused me
15 thoroughly, I'm sorry.

16 Is there an Al Capone reference
17 that you would like to raise, I am not
18 sure where this went.

19 Q. You've testified to it multiple
20 times, but I don't want to waste time
21 talking about Al Capone.

22 You've used an analogy, you
23 don't go up to the bank robber and ask him
24 whether he robbed a bank, but presumably
25 you're assuming your conclusion in making

1 LEVITT

2 that statement, are you not?

3 A. You're not assuming any
4 conclusion, you're doing your
5 investigation that gets you to your
6 conclusion and you don't necessarily go
7 and ask someone about whom there is
8 sufficient evidence for whatever the
9 action is at hand, in this case a
10 designation and the bank robbery and
11 arrest, whether they did it and expect to
12 get useful information back.

13 Q. Well, they could tell you they
14 were in Poughkeepsie that day and not in
15 Brooklyn, right?

16 A. And if that turned out to be
17 the case, you would think that would come
18 up in the investigation and, as you well
19 know, in the case of designations, there
20 are ways of appealing and suing and if
21 that type of information is there, that
22 will come out.

23 Q. We'll come on to that --

24 A. I should note also short of
25 that, OFAC does typically in certain

1 LEVITT

2 circumstances, people are designated and
3 they ask to meet with OFAC to clarify that
4 type of information if there is something
5 quite that simple and that can just
6 resolve it just like that without having
7 to go to court.

8 Q. You never had any such meetings
9 with respect to the designation that we've
10 been discussing, did you?

11 A. Well --

12 MR. HAEFELE: Objection to
13 form.

14 A. Again, I can't tell you what
15 meetings I had, but also you're asking
16 about OFAC and I was not OFAC.

17 Q. But -- okay.

18 You made a statement about
19 OFAC; you said OFAC has meetings, do you
20 have knowledge of their having meetings
21 with targets before designations?

22 A. I do not have knowledge of OFAC
23 meeting with targets before designations.

24 What I was saying just now is I
25 have knowledge, and actually not from my

1 LEVITT

2 time at Treasury, of OFAC meeting with
3 entities, persons or entities, that had
4 been designated, saying, hey, you made a
5 mistake, can we meet and I can clear it up
6 for you; if it's really that simple, it's
7 that simple.

8 Q. I am not going to ask you about
9 specific investigations.

10 In the course of your preparing
11 documents like the memo that we have seen
12 and marked, do you subpoena documents from
13 targets before you make a designation
14 decision?

15 MR. HAEFFELE: Objection to
16 form.

17 A. Again, I was in the Office of
18 Intelligence and Analysis, so that would
19 not be what OIA would do.

20 There are other parts of
21 Treasury that can do other things.

22 Q. Do you know whether any
23 documents were subpoenaed in connection
24 with this designation?

25 A. I do not.

1 LEVITT

2 Q. When Treasury receives
3 classified information from confidential
4 sources from other stakeholders, does it
5 know who the confidential sources are?

6 MR. HAEFELE: Objection to the
7 form.

8 A. By stakeholders, you mean other
9 parts of the U.S. intelligence community?

10 Q. That's correct.

11 A. Okay.

12 So part of Treasury, the part
13 that I was in, is also part of the
14 intelligence community.

15 So there are a couple of ways
16 to answer this question.

17 One is, depending on the type
18 of document in question, that document may
19 already include information about the
20 reliability, the confidence level, in the
21 underlying source for any particular piece
22 of information.

23 Q. You say it may include that
24 information?

25 A. Correct.

1 LEVITT

2 Q. Or it may not, correct?

3 A. Depends on the type of document
4 or report.

5 Q. Okay.

6 A. If it does not, then within
7 intelligence community channels, there are
8 ways to be able to get that information so
9 that, you know, if one part of the
10 intelligence community is the collector
11 and they hold those kind of crown jewels
12 of the identity of the source and when it
13 was vetted and all that kind of stuff,
14 that's not going to be available to other
15 parts of the intelligence community that
16 may have access to the final report that
17 comes out of this, if that final report
18 does not include some information to give
19 that user a sense of, well, what kind of a
20 source, how credible, there are ways to go
21 back to that originating agency and
22 address that question.

23 Q. Can you rely on hearsay
24 evidence in your process of preparing a
25 memorandum like the memorandum that we

1 LEVITT

2 have marked earlier?

3 A. Define hearsay for me, please.

4 MR. HAEFELE: Objection to the
5 form.

6 Q. Hearsay is evidence that is not
7 -- that is not primary evidence in terms
8 of a document or a statement of an
9 individual, that's not a technical legal
10 definition, but you can use that.

11 A. I am not sure that helps.

12 Hearsay is a legal term, right,
13 so it doesn't apply in that sense to the
14 intelligence community.

15 But if we're going to use it a
16 little more colloquially, which I think is
17 how you intended it --

18 Q. Yes.

19 A. -- then the simple answer is
20 no, you cannot just hear something from a
21 cab driver and throw it into a report
22 without any kind of explanation of where
23 and how you heard it, who you heard it
24 from and what their credibility or
25 reporting track record is, that's not how

1 LEVITT

2 the system works.

3 So the system is built in such
4 a way to avoid
5 I-heard-in-the-elevator-going-up-to-my-
6 apartment.

7 Q. Can you use a legal pleading
8 that's submitted by a party as something
9 to support a designation?

10 MR. HAEFELE: Objection to
11 form.

12 A. Can you use a legal pleading,
13 say it again, please.

14 Q. A legal pleading submitted by a
15 party in litigation, where a party says
16 IRRO did X and it's a pleading, it's not
17 proven, would you rely on that in a
18 designation?

19 MR. HAEFELE: Objection.

20 A. I suppose we'd have to have a
21 particular instance in hand for me to
22 fully be able to answer, understand and
23 answer the question.

24 You can have -- you can
25 include classified information, you can

1 LEVITT

2 also include unclassified information.

3 That unclassified information
4 can include things like testimony in a
5 trial.

6 Q. Could you use a proffer
7 submitted by the prosecution that has
8 never been presented at a trial?

9 MR. HAEFELE: Objection to the
10 form.

11 A. I don't know.

12 Q. Can you use newspaper articles
13 to support a designation?

14 MR. HAEFELE: Form.

15 A. So you can cite to newspaper
16 articles for some points in a designation,
17 that doesn't mean the designation is based
18 on newspaper articles.

19 Again, what are you using the
20 newspaper for, right; on a certain date
21 the president of the United States enacted
22 this executive order, cite to The New York
23 Times, no problem with that.

24 So you can use newspaper
25 articles where appropriate.

1 LEVITT

2 Q. But of course designee doesn't
3 know what you're using it for because it's
4 classified, right?

5 A. Designee doesn't know what
6 we're using --

7 Q. If you cite -- you just said
8 it depends on what the newspaper article
9 is used for.

10 A. In other words, it depends on
11 what is included in that article that you
12 are using.

13 So if you have an article that
14 states some fact that can't be verified
15 anywhere else in the world, that may not
16 be as strong as quoting a newspaper
17 article for a verifiable fact or a quote
18 or something like that.

19 The designee is not privy to
20 the designation and does not know; that's
21 not particularly relevant as to whether or
22 not the citation to a media article is
23 something that can be relied on for the
24 particular point being referenced.

25 Q. I know it is 5:30.

1 LEVITT

2 raw reporting, where it ends up or not,
3 correct?

4 A. You do not necessarily know
5 looking at a raw report where it
6 ultimately gets referenced from the
7 outside; in the intelligence community
8 there are ways to do that.

9 Q. I want to come back to the OFAC
10 designation process in general.

11 There is no hearing conducted
12 within the Department of the Treasury
13 prior to the designation, is there?

14 A. Not in the sense that you're
15 used to as a lawyer.

16 The issue gets an extended
17 hearing, if you will, at multiple
18 meetings, where it is raised and debated.

19 More entities that are raised
20 for potential designation, far more, are
21 ultimately not designated --

22 Q. That's not my question --

23 A. But it is, because your
24 question is does it get a hearing and this
25 is the --

LEVITT

2 Q. No, I asked you whether there
3 is a hearing conducted with a neutral
4 decision-maker prior to designation.

5 A. No, that you didn't ask, but
6 that's another question.

7 So, no, there is no single
8 hearing with, however you want to define a
9 neutral decision-maker, I would argue that
10 the people doing this are neutral, I don't
11 get paid more as a Treasury official if we
12 do a designation or don't, I've got no
13 skin in that game.

14 Q. A judge doesn't get paid more
15 either, but a judge is a judge and a judge
16 is different than having everybody working
17 for the government, right?

18 MR. HAEFELE: Objection,
19 argumentative.

20 A. If you are a defendant and you
21 have a U.S. government paid defense
22 counsel, that's worse, because they're all
23 paid by the government. I don't think so.

24 O. You --

25 A. You have a lot of people --

1 LEVITT

2 (Cross-talking.)

3 Q. You know the difference between
4 having a unilateral process and adversary
5 process; are you familiar with the
6 difference between those two?

7 A. Certainly in the legal context,
8 but I would argue --

9 Q. I am not asking you to argue, I
10 am just asking you to answer my question.

11 A. I will appreciate you not
12 interrupting me like that, we have been
13 really good for three-and-a-half hours,
14 let's stop now.

15 Q. I would appreciate you just
16 answering my questions.

17 A. I'm trying hard.

18 Q. Okay.

19 A. My turn?

20 Q. The question is, do you know
21 the difference between a unilateral and
22 adversarial process?

23 A. Yes.

24 Q. There is no one in the room
25 that represents the potential designee, is

1 LEVITT

2 there?

3 A. There are people in the room
4 who are not there as the let's-do-this,
5 there is no one there saying my job is to
6 argue not to do this and yet there are
7 many, many people who do, because there is
8 no automaticity to this, you want to get
9 it right, there is multiple levels, both
10 in the legal review and in the substantive
11 review, leave aside the policy review,
12 whether or not it is good policy.

13 People who are arguing
14 vociferously against any given action,
15 it's not in the sense that you're thinking
16 about it may be in a courtroom, but it's
17 not the case that this is like a kumbaya,
18 bunch of people getting together and
19 saying, hey, let's do it, not like that at
20 all.

21 Q. I wasn't suggesting it was a
22 kumbaya process.

23 You're familiar with an
24 administrative process where there is an
25 administrative law judge who hears

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1 LEVITT

2 evidence; there is no process like that in
3 the designation, is there?

4 A. Not like that.

5 MR. HAEFELE: Objection to
6 form.

7 Q. There is no opportunity for the
8 target to submit contrary evidence, is
9 there?

10 A. Not in the process of the
11 designation.

12 Q. On page 17 of your report,
13 which is Exhibit A, you talk, and you
14 referenced it earlier -- Exhibit 2001,
15 sorry -- you say, you state from
16 experience that those listed in the
17 process can and do appeal designations.

18 Do you recall that, that's
19 correct, isn't it?

20 A. I'm sorry, one second.

21 MR. HAEFELE: Objection to the
22 form.

23 A. 17?

24 Q. I think it's --

25 A. You have it up, someone has

1 LEVITT

2 magically put it up on the screen now, so
3 I don't need to search for it, thank you.

4 Q. Designated entities can and do
5 appeal their designation, that's correct,
6 isn't it?

7 A. Thank you very much, there you
8 go.

9 (Witness perusing document.)

10 A. I don't know about you, but
11 I've got progressive, so when that pops
12 up, that's really something for me.

13 Yes, it says that here.

14 Q. I think we're all progressives
15 here.

16 And you say "in none of these
17 cases was U.S. government action
18 capricious."

19 Now, capricious is a legal
20 term, correct?

21 A. Not for me, I am not a lawyer,
22 you may use it as a legal term.

23 Q. Are you aware, sir, that the
24 standard for appealing a designation is
25 that the action taken was arbitrary and

1 LEVITT

2 capricious or an abusive process, are you
3 aware of that standard?

4 A. When you say it like that, that
5 rings a bell.

6 But not -- no, I haven't
7 memorized this, but it doesn't surprise.

8 Q. Do you know how a designee
9 appeals a designation?

10 A. Primarily -- well, the actual
11 appeal is primarily through a suit.

12 Q. And that's brought in Federal
13 District Court, correct?

14 A. Correct.

15 Q. Were you ever involved in any
16 such lawsuits when you were in the
17 government?

18 A. Again, I was in the Office of
19 Intelligence and Analysis, I was not
20 involved in anything like that.

21 Q. And the standard -- so you
22 file a lawsuit in District Court, that's
23 how you appeal the designation, correct,
24 and presumably a designee has to pay to
25 litigate a lawsuit in Federal Court,

1 LEVITT

2 correct?

3 MR. HAEFELE: Objection.

4 A. Presumably, I don't know,
5 sounds like you don't know either, I have
6 never done it.

7 Q. Actually, I do know and I have
8 done it and you do.

9 Is the lawsuit filed under the
10 Administrative Procedure Act, to your
11 knowledge?

12 A. I don't know.

13 MR. HAEFELE: Objection, form.

14 Q. The standard that is applied in
15 a designation is that the government has
16 reason to believe there is a basis for the
17 designation, correct?

18 A. Yes.

19 Q. And when you go to court to
20 challenge a designation, you must prove
21 that the government was arbitrary and
22 capricious in stating that it had a reason
23 to believe there was a basis for
24 designation, correct?

25 A. If you say so.

1 LEVITT

2 MR. HAEFELE: Objection.

3 Q. Well, you said earlier that you
4 understood the legal parameters around the
5 standard.

6 You understand that if you
7 appeal the designation, you have to prove
8 that the government acted arbitrarily and
9 capriciously in asserting a reason to
10 believe a basis, correct?

11 MR. HAEFELE: Objection to
12 form, mischaracterizes earlier testimony.

13 Q. And that's a pretty high
14 standard, isn't it, you have to prove that
15 the government was unreasonable and
16 arbitrary and capricious and had no
17 reasonable basis for the designation,
18 correct?

19 MR. HAEFELE: Objection, form.

20 A. I am not in a position to
21 judge, you know, how reasonable or
22 unreasonable a level of proof that is.

23 This is administrative action
24 and under the law, that's the threshold.

25 Q. Let's take a look at your

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2 expert rebuttal report, which we're going
3 to mark as Exhibit 2005, and I would like
4 to direct your attention to F4, the way we
5 put it on the listing.

6 (Defendants' Exhibit 2005,
7 Expert Rebuttal Report, was marked for
8 identification, as of this date.)

9 Q. Page 6, please.

10 I would like to direct your
11 attention to the second full paragraph on
12 the page, and in particular your statement
13 in the report that begins, the last two
14 sentences, "this, parenthetically,
15 explains."

16 (Witness perusing document.)

17 Q. You say, "This,
18 parenthetically, explains why the U.S.
19 government successfully defends most such
20 lawsuits - it sets out from the outset to
21 make sure the full evidentiaries are so
22 airtight that they are fully defensible in
23 court."

24 Do you see that?

25 A. I do.

1 LEVITT

2 Q. And yet the standard as we've
3 been discussing is, in order to prevail in
4 court, all the government needs to do is
5 to show that its decision that it had
6 reason to believe was not arbitrary and
7 capricious or an abuse of discretion,
8 correct?

9 MR. HAEFELE: Object to the
10 form.

11 A. Sorry, what's the question?
12 MR. LEWIS: Could you read back
13 the question, please.

14 (Record read.)

15 A. The fact that that's the
16 standard doesn't mean that the government
17 lawyers nonetheless insist that the
18 factual information be beyond reproach and
19 that is my experience.

20 Specifically, you didn't ask
21 me, you didn't highlight this, but the
22 point that this is following for context
23 is about the fact that there are two
24 rounds of legal review.

25 Forget the Treasury/OFAC review

LEVITT

2 for sufficiency; there is on top of that
3 an entire separate set of review within
4 the Department of Justice specifically for
5 litigation risk which, you know, routinely
6 comes back and says I know that you've hit
7 the threshold here, we want you to hit it
8 higher, and you may not agree with the
9 Department of Justice's decision to do
10 that, you may not think it's necessary, it
11 may not actually be necessary based on
12 what you've explained on your expertise,
13 I'm just telling you from my experience,
14 this has been, this was the case.

15 Q. The litigation risk that we're
16 talking about is the risk that a court
17 will find that you had no reason to
18 believe there was a basis for designation
19 and you say that explains why we always
20 win.

21 And I'm asking you whether you
22 have some basis for stating that the
23 Department of Justice's litigation risk
24 explains why the government wins as
25 opposed to the standard of arbitrary and

1 LEVITT

2 capricious.

3 So what I'm asking you is
4 whether you have a basis to say that the
5 Justice Department's litigation risk
6 assessment is the reason why the
7 government always wins, which is what you
8 say here on page 6.

9 A. I don't know what's so
10 complicated here.

11 MR. HAEFELE: Wait; Eric, can
12 you pick one of those questions so I know
13 which one I'm objecting to.

14 Q. You say this explains why the
15 U.S. government successfully defends most
16 such lawsuits, do you see where you say
17 that, and I am saying to you, do you agree
18 that in order to successfully defend a
19 lawsuit, all the government needs to show
20 is that it was not arbitrary and
21 capricious to decide it had a reason to
22 believe?

23 A. And my answer to you --

24 MR. HAEFELE: Objection to
25 form.

LEVITT

2 A. -- again, is the fact whether
3 or not they had to do it, whether or not
4 they were going overboard, the Department
5 of Justice lawyers reviewing these
6 evidentiaries for litigation risk took the
7 position regularly that these
8 designations, these evidentiaries had to
9 be airtight, that the quality of the
10 information had to be extremely strong,
11 because they did not want to be in a
12 position where they couldn't defend,
13 successfully defend, one of these actions.

14 You're telling me as a lawyer
15 they didn't need to do this; super
16 interesting.

17 I'm telling you from the
18 perspective of those who were doing it,
19 this was part of the process and this was
20 the reason there was litigation risk
21 review on the part of the Department of
22 Justice.

23 Q. Did you participate in the
24 litigation risk review?

25 A. I participated in the overall

1 LEVITT

2 process of this, part of which was handing

3 off a draft evidentiary at a certain point

4 to both OFAC lawyers and DOJ lawyers and I

5 would sometimes be in those meetings that

6 would follow after they did their review

7 where they would say this is not good

8 enough, that's not good enough, this you

9 got to take out, whatever it is.

10 I would hear this feedback all
11 the time.

12 Q. Did you participate in that
13 process with respect to the designations
14 of the IIRO Philippines or Indonesia
15 office?

16 A. If I knew I couldn't tell you,
17 but I don't remember which specific
18 incidents I did participate in those
19 meetings and didn't, I didn't have to
20 every time.

1 LEVITT

2 person like myself or somebody else to be
3 part of that meeting.

4 Q. You say, "This sets an even
5 higher de facto standard for designations
6 to move forward than laid out by the
7 letter of the law and typically goes well
8 beyond" -- I'm sorry, I'm reading the
9 wrong thing, looking at my wrong notes, I
10 apologize, and it is 5:59.

11 Can we take a look at page 4,
12 please.

13 (Witness complying.)

14 Q. I would like to direct your
15 attention to the penultimate paragraph.

16 MR. HAEFELE: Looking at the
17 one that starts "in practice"?

18 MR. LEWIS: Yes.

19 Q. We've talked about the reason
20 to believe standards and you say at the
21 end of this, "This falls short of a
22 criminal case where the standard is beyond
23 a reasonable doubt, but is arguably even
24 more robust in the civil case standard of
25 a preponderance of the evidence."

1 LEVITT

2 What is your basis for making
3 that statement about burdens of proof?

4 A. It is experience; at the end of
5 the day I cannot remember a single time
6 where people said, well, not all the
7 evidence points this way, but a
8 preponderance of the evidence does.

9 In my experience, it was always
10 the case that it was either extremely
11 strong or it wasn't going forward; never,
12 never, was I aware of any case, any
13 designation, where whatever the civil case
14 standard might have been, where in fact
15 the Treasury Department said, well, if the
16 preponderance of the evidence, so, okay.

17 Q. But preponderance of the
18 evidence is a standard applied by neutral
19 decision-maker, right, that's the civil
20 standard, you understand that, right?

21 A. Right, this is a civil case
22 standard where evidence or whatever
23 preponderance means is enough.

24 In our case that would never
25 fly.

1 LEVITT

2 Q. An administrative law judge
3 also applies a preponderance of the
4 evidence based upon an adversarial
5 proceeding, correct?

6 A. That's correct.

7 MR. HAEFELE: Object to form.

8 Q. And here there is never any
9 evidence submitted by the other side,
10 right?

11 A. That's not what I'm stating
12 here.

13 We can discuss that if you'd
14 like, but I'm saying here simply the
15 threshold is ultimately in the
16 designations more than, far more than, a
17 preponderance of the evidence.

18 I hear your response, which is
19 a statement, not a question, for a very
20 interesting discussion about, yes, but
21 that preponderance of the evidence is
22 determined by an independent judge.

23 Q. Fair enough; legal standard
24 that binds the determination under the
25 executive order is reason to believe,

1 LEVITT

2 who have been involved in the process have
3 discussed it the same way I have.

4 The process as we have
5 discussed it is not itself a classified
6 matter, which is why I'm able to discuss
7 it.

8 Q. You talked yesterday about
9 whether you had reviewed depositions that
10 had been taken in this case of fact
11 witnesses, do you recall that, sir?

12 A. Yes.

13 Q. And you said that you had been
14 given certain portions of depositions by
15 counsel, do you recall that?

16 A. Yes.

17 Q. Now, you don't refer to those
18 depositions in your report, but you do
19 refer to a portion of one deposition in
20 your rebuttal report.

21 Do you recall that, sir?

22 A. Not offhand, but I take your
23 word for it.

24 Q. Did you receive the portions of
25 the deposition that you referred to after

1 LEVITT

2 looked at none of them, correct?

3 A. I am not aware of what banking
4 information was made available in this
5 case, that's not the type of work that I
6 do and it is not the type of financial
7 tracing that I would have done in
8 government, anyway, that's not my area of
9 expertise, so I would not have done that.

10 Q. So you didn't do any financial
11 tracing in connection with the
12 designations of IIRO Philippines or IIRO
13 Indonesia, correct?

14 A. Did I personally, no.

15 Q. Did you look at any financial
16 tracing or financial data that was
17 provided by your team in connection with
18 the designation?

19 A. Beyond the sources that have
20 been left unredacted in the declassified
21 designation, I am not at liberty to tell
22 you anything I looked at.

23 Q. I see --

24 A. To be clear, I was not the one
25 who drafted it, I looked at it, but I

1 LEVITT

2 can't go into anything that remains
3 classified.

4 Q. Did you ever look at any
5 financial tracing records given to you by
6 your staff in connection with the
7 designation process?

8 A. You can ask the question
9 multiple ways, but unfortunately I'm still
10 limited by a legal requirement not to
11 reveal anything that remains classified.

12 Q. I understand that, but I can
13 ask the questions and if you can't answer
14 it, then we have a record that you can't
15 answer it and then we can confront the
16 court about the consequences of that, but
17 I am going to ask you the questions, sir.

18 A. With pleasure.

19 Q. Okay.

20 Have you ever reviewed any
21 Hawali records?

22 A. Not out of government and I
23 can't speak to what I did in government.

24 Q. Are you aware, sir, that the
25 9/11 Commission concluded that it could

1 LEVITT

2 A. Yes.

3 Q. None of those refer to IIRO or
4 MWL, do they?

5 A. Correct.

6 MR. HAEFFELE: Objection to
7 form.

8 Q. Let's move on.

9 We've talked about what we've
10 called the Hammerle report, do you know
11 what I'm referring to, is that clear, sir?

12 A. By Hammerle report, do you mean
13 the IIRO designation?

14 Q. I mean the report that you
15 wrote to Barbara Hammerle, yes, I think
16 we're talking about the same thing and I
17 spilled some water, but hopefully I can
18 find a dry copy.

19 Oh, here it is and it's dry.

20 (Pause.)

21 Q. You did not cite this report in
22 your report.

23 Were you aware at the time that
24 you prepared the report that the
25 Hammerle -- that this document, which is

1 LEVITT

2 marked as 2003, had been produced in
3 redacted form in this litigation?

4 A. Hold on, 2003, let me cull it
5 up.

6 Q. That's your memo to Barbara
7 Hammerle.

8 A. This is what we referred to as
9 the IIRO designation or the evidentiary,
10 the report itself.

11 To be clear, this is not a memo
12 that I personally drafted; it goes out
13 from the Office of Intelligence and
14 Analysis and the way it's done is from the
15 head of that office, which was me in my
16 capacity as deputy assistant secretary, to
17 OFAC, meaning the director in this case,
18 there was an acting director, Barbara
19 Hammerle.

20 So this was actually drafted by
21 others, reviewed by many, ultimately
22 including myself.

23 I want to be clear for you,
24 because you referred to it as my memo,
25 this is just the way the department does

1 LEVITT

2 its internal workings of formally passing
3 it over to OFAC.

4 Q. You reviewed and approved it
5 before you initialed it, correct?

6 A. Yes.

7 Q. Were you aware at the time that
8 you prepared your report that this
9 document had been produced in the
10 litigation?

11 A. Yes.

12 Q. And you reviewed it and relied
13 on it but did not cite it in your report,
14 is that correct?

15 MR. HAEFELE: Object to form.

16 A. I did not use it in my report
17 because it seemed kind of inappropriate
18 for the document that had my name on it.

19 So I just, you know, I relied
20 on the other material, I think I included
21 the press release and the IIRO
22 designation.

23 It just seemed a little --
24 like it would be a little strange.

25 Q. I'd like to direct your

1 LEVITT

2 be included to be able to serve as source
3 for a unique fact, in this case the fact
4 that IIRO was a defendant in this case.

5 Q. That exhibit was included in
6 the 754-page overall package as an exhibit
7 that was sent around to the various
8 agencies and participants in the process,
9 correct?

10 A. No.

11 First of all, all of the
12 underlying documents don't necessarily
13 kind of travel all over the place.

14 For the review, it depends who
15 needs or wants them and I don't know how
16 many pages Exhibit 67 was.

17 For the purpose of just being
18 able to say, hey, they were listed in
19 defendants, you probably didn't need to
20 include very much other than maybe just
21 even the cover page, but I don't know what
22 Exhibit 67 included, it doesn't include
23 page numbers.

24 Q. I'm kind of confused here,
25 because there is no unredacted reference

1 LEVITT

2 Q. Your entire period of time with
3 Treasury, the 15 months, what part of that
4 were you involved in actually -- actually
5 involved in the designation process in any
6 capacity?

7 MR. HAEFELE: Objection, form.

8 A. Sorry, at what point in those
9 15 months or in what way was I involved?

10 Q. In what period of time, I'm
11 just wondering when you started your job
12 on day 1 did you start -- were you
13 involved in the designation process, did
14 you have to go through a training period.

15 Of those 15 months, when did
16 you actually start becoming involved in
17 the designation process to any extent?

18 A. I don't know a date, probably I
19 was allowed to get my feet wet a little
20 bit and kind of learn the ropes.

21 To be clear, I was not ever
22 drafting the designations, I was within
23 that kind of senior management overseeing
24 the process.

25 And then as we discussed

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earlier, at some point, for those designations that ultimately went forward, which was fewer than those that didn't make it through the process because of the nature of how robust it was, at one point the package in its current form would be put into a memo and the way it would be delivered within Treasury's offices, from Treasury's Office of Intelligence and Analysis to OFAC, would be from the DAS, for intel, intelligence, which was me during those periods, to the director, and at one point there was an acting director at the Office of Assets Control, OFAC.

16 So I don't remember exactly
17 what the first date was that I played some
18 type of role in this whole process.

19 I typically was representing
20 Treasury in meetings.

1 LEVITT

2 course we didn't only do designations, we
3 did lots of other things, I'd get kind of
4 read-up and read-in and play my role.

5 Q. To drill down on that a little
6 bit.

7 When you say it took some time
8 to get your feet wet, how long?

9 A. I've told you I have no idea if
10 it was, you know, day 2 or week 2.

11 Treasury's Office of
12 Intelligence and Analysis --

13 Q. Let me just stop you there,
14 because I appreciate your answer, but my
15 time is tight.

16 You're not sure if it was day
17 2, week 2; was it month 2?

18 A. I'm sure -- I don't remember
19 exactly.

20 I assume it was quicker than
21 that; again, because I wasn't the one
22 drafting, I didn't have to be the subject
23 matter expert, I was the one who was
24 reviewing as part of that process and so I
25 imagine I was able to start up in that

1 LEVITT

2 role fairly quickly.

3 Q. So a couple of weeks, a few
4 weeks?

5 A. Maybe even earlier.

6 I can't say it enough times, I
7 don't know.

8 Q. Got it.

9 A. But it was quick.

10 Q. Then you talked about a
11 percentage of your work at Treasury was in
12 the designation process when you were
13 actively working as the deputy assistant
14 secretary.

15 What percentage of your time as
16 deputy assistant secretary was spent on
17 designations?

18 A. I have no idea and it probably
19 varied based on work flow.

20 Like I said, I had lots of
21 different responsibilities, lots of
22 management responsibilities, that were not
23 part of the -- what I would call the
24 substance of the work, you know, HR,
25 budget, all that kind of stuff.

1 LEVITT

2 There was always more than one
3 designation happening at a time, in
4 different stages of the process, and you
5 work on one for a long time and ultimately
6 some don't go through.

7 And then there is -- the
8 Office of Intelligence and Analysis is
9 part of the intelligence community, so our
10 office was also just producing finished
11 intelligence reports of all different
12 kinds all the time as well.

13 So we had a lot going on, I
14 wouldn't even know where to start, how to
15 answer that question.

16 Q. 10 percent of your work, 15
17 percent of your work?

18 A. I'm sorry, you can guess every
19 number from one to a hundred, I still
20 won't be able to answer you if the answer
21 is I don't know.

22 Q. I understand we can't quantify
23 it, but my sense is that while you were at
24 DAS or while you were at Treasury as a
25 DAS, you were extremely busy with many

1 LEVITT

2 tasks, one of which was being involved in
3 the designation process from a review
4 standpoint, not an authoring report
5 standpoint, is that accurate?

6 A. Correct, reviewing it.

7 Part of my role was shepherding
8 it through the various processes of the
9 inner agency once it got to a certain
10 level.

11 So I had to go to lots and lots
12 and lots of meetings, some of which were
13 not only about designations but would
14 include designations, so there were
15 certain times illicit finance meetings
16 more broadly and part of that would be,
17 okay, Treasury, where are we on certain
18 designations, that type of a thing.

19 So I had kind of multiple ways
20 that I was involved, but I was not the
21 drafter, you're right.

22 Q. Got it.

23 So out of those tens of
24 charities that were designated with ties
25 to Al Qaeda and Hamas, among other

1 LEVITT

2 terrorist groups, WAMY was not amongst
3 those designated, correct?

4 A. That's correct.

5 Q. WAMY International or sometimes
6 referred to as WAMY USA, was not amongst
7 those designated, correct?

8 A. Correct.

9 Q. Would you agree that the
10 designation is a sanction in and of
11 itself, it is a sanction against the
12 entity sanctioned -- sorry, that was
13 confusing.

14 Designation is a sanction
15 against the entity designated?

16 MR. HAEFELE: Objection to the
17 form.

18 A. Yes, I think it is accurate to
19 say designations are a form of sanctions.

20 There are many forms of
21 sanctions, but this has financial
22 consequences.

23 Q. Would you agree that the
24 sanctions associated with designation give
25 the U.S. leverage over foreign nations

1 LEVITT

2 when it comes with respect to a charity
3 that might be based in that foreign
4 nation?

5 MR. HAEFELE: Objection to
6 form.

7 A. So these types of actions are
8 meant to prevent bad actors from being
9 able to carry out their bad actions.

10 If the primary goal here is to
11 have leverage vis-a-vis the host country,
12 that alone would not be insufficiency --
13 I mean, it wouldn't even be in the
14 ballpark for taking such an action.

15 In fact, it's frequently the
16 opposite effect; that because of
17 sensitivities about diplomatic equities
18 and diplomatic relations, entities,
19 including entities that might have been
20 nominated for designation, might not
21 ultimately be designated.

22 Is it the case, however -- I'm
23 sorry.

24 Q. Let me just be more specific.
25 Let's pull up 2021 again,

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2 please, page 13.

3 A. This is my report, the first
4 report?

5 Q. No, no, this is the CFR Task
6 Force Report.

7 A. Okay.

8 MR. HAEFELE: What page are you
9 pulling up?

10 MR. GOETZ: Page 13, please.

11 Q. Just the first paragraph, I ask
12 that we blow that up, please.

13 Just in the interest of time, I
14 just ask that you read that to yourself
15 and tell me whether you agree with it or
16 disagree with it.

17 (Witness perusing document.)

18 A. Okay, I've read it.

19 Q. Do you agree or disagree with
20 that portion of the CFR report?

21 A. It is not how I would describe
22 it.

23 Q. So you disagree with it?

24 MR. HAEFELE: Objection to
25 form.

LEVITT

2 A. I -- let me put my answer in
3 my own words.

5 A. It is not how I would put it,
6 because this implies that one of the
7 purposes of the designation would be to
8 create leverage for them to do.

19 That does create some leverage
20 sometimes; not always enough, not always,
21 and not always enough for there to be
22 action, especially if the entity is
23 closely tied to the government and its
24 rulers.

When a designation happens, it

1 LEVITT
2 is the case, especially if you're dealing
3 with entities that have multiple branches
4 and if only some of those branches have
5 been designated, that that can create
6 leverage, create willingness to have a
7 more robust conversation, especially if
8 there wasn't willingness to have one
9 before.

10 And so my point here, for
11 example, to the Al Harmain example, where
12 there were a couple of branches designated
13 and a couple more and a couple more, I
14 think it was ultimately the fourth time
15 around, if memory serves, that all of them
16 were designated and ultimately the Saudis
17 joined in that designation, so there can
18 be leverage that can be created.

1 LEVITT

2 advance of the sanction.

3 Q. Let me just stop you here.

4 You would agree that this
5 Council For Foreign Relations Task Force
6 Report talks about the leverage resulting
7 from the designation itself, correct,
8 that's what this discusses?

9 A. They're saying that it can in
10 some cases create such leverage.

11 Q. And that lengthy explanation
12 that you just gave me, that's based on
13 your experience at the Department of
14 Treasury, is that correct?

15 MR. HAEFELE: Objection to
16 form.

17 A. This is based on my experience
18 and understanding of how the system works.

19 Q. While you were at the
20 Department of Treasury for 15 months doing
21 all the things that you were doing as
22 deputy assistant secretary, correct?

23 A. Again, to be clear, not just
24 based on my 15 months there, but as
25 someone who follows combating of financing

1 LEVITT

2 of transnational threats generally, but
3 also based on my experience when I was in
4 government, you know.

5 This is meant to be a tool,
6 it's not meant to be punishment, it's
7 meant to achieve the goal of stopping
8 illicit behavior.

9 And so it is not the case that
10 you just want to do the designation no
11 matter what, you can use the possibility
12 of designation for other action.

13 Or, by the way, even if it
14 comes up in the course of the interagency
15 discussions that there is some other
16 action that can be taken --

17 Q. Let's just not get too far
18 afield, I was just asking for your
19 experience just as a foundational
20 question.

21 Do you have any experience --
22 you've never worked at the State
23 Department, correct?

24 A. I did work as a temporary
25 government employee for the State

1 LEVITT

2 assume it is.

3 Q. Yesterday in your testimony in
4 response to Mr. Lewis's question, you were
5 asked generally some questions about
6 relying upon newspaper articles, do you
7 recall those questions?

8 A. Correct.

9 Q. And you say as part of your
10 methodology you can do it, but you would
11 want to know something about the
12 publication, was it reliable, did it have
13 good vetting, and I am paraphrasing, and
14 you would also, if you could, want to know
15 something about the author of that
16 article, do you recall those answers
17 generally?

18 MR. HAEFELE: Object to form.

19 A. Generally, yes.

20 Q. What do you know about the
21 person who wrote this article?

22 A. We don't, but this seems to be
23 something we can rely on for the purposes
24 the Muslim World Publication is quoting a
25 Muslim World League event, someone at a

1 LEVITT

2 Q. What are the reasons why the
3 Treasury Department lifts designations
4 when warranted?

5 A. Either because it is found that
6 the court decides that it did not hit
7 threshold or you could have a situation
8 where designations are removed because the
9 entity no longer exists or it is
10 established that the entity is no longer
11 engaged in the activity with which it was
12 accused of engaging in per the
13 designation.

14 Q. Could it also be that Treasury
15 has decided that it erred in designating
16 the individual or entity in the first
17 place, regardless of whether a court finds
18 that it did?

19 MR. HAEFELE: Objection to
20 form.

21 A. I can't think of an instance
22 where Treasury came out and said that they
23 erred, I can't think of an instance where
24 that happened offhand.

25 Q. You believe that the United

1 LEVITT

2 States Treasury has never erred in
3 designating an individual or entity?

4 MR. HAEFELE: Objection to
5 form.

6 A. I don't know of a case where
7 they have, but that's also not what I
8 said.

9 What I said, you asked me
10 originally if a Treasury error could be a
11 reason and I answered I can't think
12 offhand of a case where someone was
13 delisted and the reason was given Treasury
14 -- by Treasury saying Treasury made a
15 mistake, I can't think of such an example.

16 Q. I'm just going to ask you
17 another question.

18 Could one reason be for the
19 lifting of a designation by the United
20 States Treasury Department that it erred
21 in making the designation in the first
22 instance?

23 MR. HAEFELE: Objection to
24 form.

25 A. I think it would be highly

1 LEVITT

2 unlikely given the robust nature of that
3 process and I can't think of an instance
4 where that was the case.

5 Q. So you believe it's not
6 possible that the reason for the lifting
7 of a designation is because Treasury
8 Department made an error?

9 MR. HAEFELE: Objection to the
10 form.

11 A. Yeah, you could state my
12 answers in a different way, but that's not
13 what I said.

14 I said I know of no such case
15 and I find it highly unlikely because of
16 the robust nature of the process.

17 In the world of hypotheticals,
18 you know, could pigs fly, could something
19 happen, I suppose in a hypothetical, but I
20 know of no such case.

21 Q. And your knowledge comes from
22 the time that you were at the Department
23 of Treasury and any other public
24 information, is that correct?

25 A. Yes, but not limited to my time

1 LEVITT

2 at Treasury.

3 If an entity is delisted, that
4 is a public event, public happening.

5 Q. Does the U.S. Treasury
6 Department always give a reason for the
7 lifting of a designation?

8 A. I don't know if the Treasury
9 Department gives a reason, I can't recall
10 a specific Treasury press statement as
11 such, I don't remember an example like
12 that.

13 Q. So how would you know what the
14 reason is for the lifting of a designation
15 if the U.S. Treasury doesn't give a
16 reason?

17 MR. HAEFELE: Form.

18 A. Well, we'd need to look at
19 examples where it happened and to see, but
20 I'm just saying I don't recall an example
21 where the reason cited was Treasury made a
22 mistake.

23 This is an exceptionally robust
24 process which includes multiple levels of
25 reviewing, including litigation risk

1 LEVITT

2 review, which is taken well above the
3 necessary legal threshold, not just for
4 sufficiency.

5 So it shouldn't surprise that
6 at the end of the day the Treasury
7 designations that ultimately do go forward
8 and many more that are promoted or
9 suggested don't go forward, that those are
10 very robust.

11 Q. Maybe I can just ask you a more
12 simple question and I read the testimony
13 of yours in prior cases, Dr. Levitt, and I
14 know you have the ability to answer
15 straightforwardly.

16 I do think it would be helpful
17 to the court in this case as we're
18 presenting your testimony if we could try
19 to communicate in a straightforward
20 manner.

21 On your report, on page 17,
22 when you wrote "designated entities can
23 and do appeal their designations and the
24 U.S. Department" -- let me start again.

25 On your report on page 17, you

1 LEVITT

2 wrote, "Designated entities can and do
3 appeal their designations and the U.S.
4 Treasury Department has a record of
5 lifting designations when warranted."

6 What did you mean by that
7 statement?

8 A. I am not sure I understand the
9 question, I think it is very
10 straightforward.

11 An entity that is designated
12 can appeal its designation, like, this is
13 not a final issue, you can sue, you can
14 appeal the designation, and designations
15 can be lifted.

16 These do not have to be
17 permanent, there is a process.

18 Q. And you say "the U.S. Treasury
19 Department has a record of lifting
20 designations when warranted."

21 What does that mean, "when
22 warranted"?

23 MR. HAEFELE: Objection.

24 A. When the determination is made,
25 it would typically be by the court because

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2 that's the nature of how the process goes,
3 that the designation should not stand.

4 All I was trying to say here is
5 that there is a process, I didn't mean to
6 kind of comment on the process.

7 Q. When did you become an expert
8 in the designation process by the U.S.
9 Treasury?

10 MR. HAEFELE: Objection.

11 A. I became familiar with it long
12 before my time at Treasury.

13 In fact, I was spotted for the
14 job at Treasury based on work I had done
15 on finance -- illicit finance and
16 combating illicit finance.

17 I think it's safe to say that
18 kind of more substantive expertise came
19 when I was someone who was involved in the
20 process and got to see how it worked
21 firsthand.

22 Q. So you became an expert on the
23 U.S. Treasury Department's designation
24 process beginning sometime in late 2005?

25 MR. HAEFELE: Objection, form.

1 LEVITT

2 A. Again, I had some understanding
3 and expertise in this before then, but
4 certainly that expertise was solidified
5 once I had the opportunity to kind of be
6 inside the process.

7 Q. Let me ask it this way.

8 When did you first become an
9 expert?

10 MR. HAEFELE: Objection, form.

11 Q. In the U.S. Treasury
12 designation process?

13 A. I don't know how to answer that
14 because, you know, I don't go around
15 referring to myself as an expert, I don't
16 remember when people first started
17 referring to me as an expert in these
18 things.

19 But I had developed knowledge
20 and expertise in this even prior to
21 Treasury, I had written articles about
22 these issues, but certainly became far
23 more expert in these issues when I was
24 selected to join the Treasury Department
25 in 2005.

1 LEVITT

2 Q. When was the first time that
3 you wrote an article about the U.S.
4 Treasury designation process?

5 A. Oh, I don't recall offhand.

6 Q. Was it after 9/11?

7 A. It would have to have been,
8 because in 9/11 I was with the F.B.I.
9 except for short stuff beforehand.

10 Q. Were you involved in the U.S.
11 Treasury Department's designation process
12 when you were at the F.B.I.?

13 A. No, not as such.

14 There were small number of
15 instances where as part of an interagency
16 process F.B.I. would engage with Treasury
17 on issues and it's possible that some of
18 those things were part of -- I wouldn't
19 have known it at the time -- part of
20 Treasury's, meaning F.B.I.'s, part of
21 their designation process and might have
22 been in support of something else.

23 I had very, very limited
24 contact with Treasury when I was with the
25 F.B.I. and, to my knowledge, did not work

1 LEVITT

2 on designation issues.

3 Q. I think you testified earlier
4 in your testimony that you're not aware of
5 any document that sets forth the
6 designation process, that this is
7 something that you learned about on the
8 job at Treasury and maybe in writing some
9 articles beforehand, is that correct?

10 A. So what I was asked about at
11 the time was if there is an official
12 document, like a Treasury document, that
13 lays this out, and to my knowledge there
14 is not.

15 Q. Is it fair to say you don't
16 know what the designation process was that
17 was used by the U.S. government in the
18 months following September 11, 2001?

19 MR. HAEFELE: Objection to
20 form.

21 A. I would say I have insight into
22 that.

23 I was not there at the time and
24 that makes a difference.

25 Q. When you say you had insight

1 LEVITT

2 into that, what do you mean?

3 A. Well, I have read about it, I
4 have learned about it.

5 When you go and work at the
6 Treasury, you hear and learn about kind of
7 the history of the tools you're using, you
8 know.

9 I arrived at the Treasury
10 Department in 2005, this wasn't
11 terribly -- you know, it was years, but
12 these tools were still relatively new and
13 the executive order was basically the same
14 executive order, so you learn and you hear
15 about the past and how things were done.

16 So I would say I had some
17 understanding of it, but I was not there,
18 part of the actual process at the time, I
19 was not there.

20 Q. Can you compare and contrast
21 the process that was used by the U.S.
22 government in November of 2001 compared to
23 what it was when you were at Department of
24 Treasury beginning in 2005?

25 A. My understanding is that in the

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2 weeks after 9/11, and I can understand
3 this from my own experience being at the
4 F.B.I. at that time, everything was a
5 million miles a minute, everybody was
6 afraid that there were other plots, very,
7 very tense time, things were moving very,
8 very, very fast.

9 Fast forward years later to
10 when I was at Treasury, there were very
11 clear, slow, deliberate systems in place
12 for how to go about a designation, for the
13 interagency process, for concurrence on
14 the information, on the policy, et cetera,
15 all of that, as we've discussed earlier.

16 Whereas right after 9/11, it
17 was right after 9/11, and it was a much
18 more kind of frenetic and, to be honest,
19 kind of a scary time.

20 Q. When you say -- I think I was
21 asking you about the process; do you know
22 precisely what the process used by the
23 U.S. government to make designations in
24 November 2001 was?

25 A. So it was the same executive

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2 order, but I don't know, I can't speak
3 to -- in the same kind of detail I can
4 speak to how it was later.

5 You know, what the order of the
6 meetings were, at what point did the
7 lawyers come in, that I don't know.

8 Q. Do you know who Jamal Fadl is?

9 A. Not personally, I know of him.

10 Q. Have you ever met him?

11 A. Sorry?

12 Q. Have you ever met him?

13 A. No.

14 Q. Have you ever seen him speak or
15 testify in public?

16 A. No.

17 Q. Have you ever seen audio or
18 visual recordings of him?

19 A. Definitely not video; I don't
20 recall if I've heard audio.

21 I've read a lot of transcripts
22 from his trial, not recently, years ago.

23 Q. Is it hard to evaluate
24 credibility from a transcript?

25 MR. HAEFELE: Object to form.

1 LEVITT

2 A. Sometimes.

3 If you have the patience to
4 kind of read carefully and read slowly and
5 if you don't only rely on the transcript
6 but on talking to others and reading other
7 material.

8 But a court transcript,
9 especially in a criminal case, can be very
10 revealing.

11 Q. Let me ask this question; when
12 Jamal Fadl was the sole source for
13 information, how do you evaluate whether
14 he is telling the truth?

15 MR. HAEFELE: Objection to
16 form.

17 A. Part of the answer is that this
18 is not -- this is a court hearing, this
19 is not, you know, him speaking to the
20 media, this is the product of F.B.I.
21 interviews.

22 When the evidence is put
23 forward, that has some element of U.S.
24 government vetting to it and so that is
25 given more weight, say, than someone just

1 LEVITT

2 speaking publicly at some event or to a
3 newspaper or something.

4 By virtue of it being part of a
5 trial, the trial coming to a conclusion,
6 you can give that some more weight.

7 Q. And you mentioned an F.B.I.
8 interview, so let me ask this way.

9 If Jamal Fadl gives an F.B.I.
10 interview and you read the transcript of
11 that interview, how do you evaluate
12 whether Jamal Fadl is telling the F.B.I.
13 the truth during the interview?

14 MR. HAEFELE: Objection to
15 form.

16 A. So the F.B.I. has a variety of
17 investigative tools, they can use this
18 information as lead information, working
19 on their own, or with other agencies,
20 sometimes the country's agencies try and
21 verify that information and if they then
22 choose to move forward with it, you can
23 have some level of confidence that this is
24 accurate or if it is within the world of
25 knowledge that they know, that the F.B.I.

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2 -- that the prosecutors at the Department
3 of Justice are not going forward with
4 information they believe to be untrue.

5 Q. My apologies, I understand how
6 the F.B.I. might evaluate it, which was
7 your answer, but I was asking a slightly
8 different question, and so my apologies if
9 I wasn't clear, so let me try again.

10 When Jamal Fadl gives an
11 interview to the F.B.I. and you review as
12 a social scientist that transcript, how do
13 you evaluate whether Jamal Fadl is telling
14 the truth when he is the sole source of
15 information?

16 MR. HAEFELE: Objection to
17 form.

18 A. The F.B.I. interview isn't
19 taken in isolation, the F.B.I. interview
20 goes along with the trial, transcript,
21 conviction, and in totality that will
22 gives it more credibility.

23 Q. You've made reference to your
24 methodology as the gold standard.

25 What was the methodology used

1 LEVITT
2 in connection with your two expert reports
3 in this case?

4 A. To be clear, I have not
5 referred to myself as the gold standard,
6 that's others referring to me.

7 I'm not so pompous as to, you
8 know, so let's be clear.

9 My methodology here was to
10 review material, this is historical
11 material, and put together a report based
12 on reliable material that addresses the
13 issues at hand.

14 So looking at things like the
15 9/11 Commission Report, the Muslim World
16 League's own documents, we have the
17 Treasury designations, of course, and
18 explaining a variety of issues, some of
19 them more general.

20 The larger issue of
21 vulnerabilities, charities of all kinds
22 face to abuse and the types of abuse that
23 can be involved, you know, proactively
24 setting up a charity to be a front, which
25 is a form of abuse, infiltration of

1 LEVITT

2 charities is another form of abuse.

3 And to put that information
4 together using my expertise, having worked
5 on these issues for years, to try and
6 present it in a way that will be readily
7 available to the parties that will be
8 using the report.

9 Q. In evaluating a secondary
10 source, do you evaluate the materials on
11 which the secondary source relies?

12 A. When possible you can.

13 Q. Did you do that in connection
14 with this case?

15 A. You would need to point to a
16 particular incidence of source or
17 something for me to answer that.

18 I did not go and try to
19 independently verify everything, say, in
20 the 9/11 Commission Report or Treasury
21 designation, so that can't be.

22 Certain documents, certain
23 sources like those are inherently more
24 valuable and I used them.

25 Q. When do you doubt the contents

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of a newspaper article, say a New York
Times article or Wall Street Journal
article?

5

6

MR. HAEFELE: Objection to

form.

7

A. Sometimes you have to know
enough about the subject matter to doubt
it.

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But as I explained earlier, it
might have been today or it might have
been yesterday afternoon, for the purposes
of a report like this, there are certain
things for which it's really rather safe
to use a media source.

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You know, that an event took
place on a certain day, that an individual
was in a certain place at a certain time,
that an individual made a certain
statement, certain basic factual
information, that you just want to provide
a source to your reader that they can
check to demonstrate that there is
recorded sourcing for that fact.

Q. Did you ever doubt the contents

1 LEVITT
2 of a Wall Street Journal or New York Times
3 article?

4 MR. HAEFELE: Object to the
5 form.

6 A. I'm sure, I'm sure I have.
7 Again, depends on the context,
8 depends on the author, depends on how well
9 the author does things like quoting other
10 people who can verify it, depending on
11 whether or not others will verify the
12 issue at hand.

13 There are other ways; you can
14 go and interview the author, interview
15 other people about it to give you greater
16 confidence.

17 Q. I know, Dr. Levitt, you have
18 been careful with a lot of your language
19 today and yesterday and throughout your
20 reports and so I'm going to try to
21 understand that care a little bit.

22 Maybe we can start here; do you
23 agree that a person in support of
24 terrorism doesn't necessarily mean that
25 the organization that employs that person

1 LEVITT

2 A. I don't think so, no.

3 Q. Has a court ever concluded that
4 you were unqualified to offer an opinion?

5 A. No.

6 Q. Has a court ever taken issue
7 with the methodology that you used in
8 offering an opinion?

9 A. No.

10 MR. COTTREAU: If we can go off
11 the record, I think I'm through, but let
12 me confirm that.

13 THE VIDEO TECHNICIAN: Time is
14 5:57, we're off the record.

15 (Recess taken.)

16 THE VIDEO TECHNICIAN: We are on
17 the record, the time is 6 p.m..

18 Please continue.

19 MR. COTTREAU: Dr. Levitt, I
20 have nothing more, thank you very much,
21 and the defendants collectively reserve
22 the balance of any time they have to be
23 added in the event that they have
24 reexamination for you after plaintiffs'
25 counsel has a chance to examine you.